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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,066	12/11/2003	Razvan Rentea	11251/11	9588
757	7590	06/20/2005	EXAMINER	
BRINKS HOFER GILSON & LIONE P.O. BOX 10395 CHICAGO, IL 60610			ASTORINO, MICHAEL C	
			ART UNIT	PAPER NUMBER
			3736	

DATE MAILED: 06/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/734,066

Applicant(s)

RENTEA ET AL.

Examiner

Michael C. Astorino

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 December 2003 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 6/2004.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Specification***

The first paragraph of the application should be amended from, "... Provisional U.S. Patent Application Serial No. 61/432,767..." to "... Provisional U.S. Patent Application Serial No. **60/432,767...**"

### ***Drawings***

The drawings are objected to because element number 414 is missing from the drawings. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear to the examiner how the cellular telephone has an “embedded” biofeedback device, when the biofeedback device and the cellular phone are disclosed as separate entities and “embedded” means *to cause to be an integral part of a surrounding whole* (Dictionary.com). The separate devices are exemplified by the illustration in figure 1 as biofeedback device (100) and cell phone (130).

For the purposes of examination, the examiner will use the definitional meaning of “embedded” to examine the claims since the definitional meaning appears to make the most sense with claims 1-11 as a whole.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5-9, and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Iwabuchi et al. US Patent Number 6,327,495 B1.

Claim 1. A biofeedback system comprising:

a cellular telephone device (T), including an embedded biofeedback measuring device (A, B, C, D), a data processor (21), and a user interface including a display screen (3 Display, and buttons on the face of the cellular phone 2, 4, 7-11);

first computer readable program code for controlling the biofeedback measuring device in measuring one or more biofeedback signals (at least S8-S14); and

second computer readable program code for producing a display on the display screen based on the one or more measured biofeedback signals (at least S15-S17, and S24-26).

Claim 2. A biofeedback system comprising:

a biofeedback device (A, B, C, D), configured to measure biofeedback signals of a user and communicate information about the biofeedback signals to a remote receiver; and

a cellular telephone device (T) configured to receive the information about the biofeedback signals and produce a visual display (3) related to the information on a display screen.

Claim 3. The biofeedback system of claim 2 wherein the biofeedback device and the cellular telephone device contain complementary radio communication circuits (25) for communicating the information about the biofeedback signals.

Claim 5. A biofeedback system comprising:

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a biofeedback device (A, B, C, D), configured to measure biofeedback signals of a user and communicate information about the biofeedback signals to a remote receiver;

a server (S) configured to receive the information about the biofeedback signals and store data related to the information for access and processing by other equipment; and

a cellular telephone (T) device configured to receive the data related to the information from the server and produce a visual display based on the data on a display screen (3).

Claim 6. The biofeedback system of claim 5 further comprising:

first computer readable program code stored on the biofeedback device for controlling the biofeedback device in measuring one or more biofeedback signals of a user (at least S8-S14); and

second computer readable program code (at least S15-S17, and S24-26) stored on the cellular telephone device for producing a display on the display screen based on the one or more measured biofeedback signals.

Claim 7. The biofeedback system of claim 5 further comprising: a menu system navigable by the user to obtain additional information based on contents of the display screen. (buttons on the face of the cellular phone 2, 4, 7-11)

Claim 8. A biofeedback method comprising: measuring a biofeedback signal of a user (A, B, C, D); and displaying information based on the biofeedback signal on a display screen of a cellular telephone device. (3)

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Claim 9. The method of claim 8 wherein measuring the biofeedback signal comprises detecting the biofeedback signal at electrodes on the surface of the cellular telephone device when the cellular telephone device is grasped by the user. (column 5, lines 15-20)

Claim 11. The method of claim 8 further comprising (column 7, lines 10-67):

communicating data about the biofeedback signal to a remote server for storage;  
communicating the data about the biofeedback signal to the cellular telephone device; and  
displaying the information on the display screen based on the communicated data.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-4 are rejected under 35 U.S.C. 102(e) as being anticipated by Mault US Patent Number 6,478,736 B1.

Claim 1. A biofeedback system comprising:

a cellular telephone device (column 6, lines 1-20), including an embedded biofeedback measuring device (10, figure 5 or 60 activity sensor that can be plugged into computer device column 9, lines 45-65), a data processor (inherent in PDA/Cellular phone 52), and a user

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interface including a display screen (54); first computer readable program code for controlling the biofeedback measuring device in measuring one or more biofeedback signals (figure 6, “New Data?” Step); and second computer readable program code for producing a display on the display screen based on the one or more measured biofeedback signals (figure 6, “View Status” step, see also figures 7-12).

Claim 2. A biofeedback system comprising: a biofeedback device configured to measure biofeedback signals of a user and communicate information about the biofeedback signals to a remote receiver (figure 15); and a cellular telephone device configured to receive the information about the biofeedback signals and produce a visual display related to the information on a display screen (figures 7-12).

Claim 3. The biofeedback system of claim 2 wherein the biofeedback device and the cellular telephone device contain complementary radio communication circuits for communicating the information about the biofeedback signals (column 10, lines 22-30).

Claim 4. The biofeedback system of claim 3 wherein the complementary radio communication circuits comprise Bluetooth transceivers. (column 11, lines 24-34)

*Claim Rejections - 35 USC § 103*



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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Iwabuchi et al. US Patent Number 6,327,495 B1 in view of Yoo US Patent Number 6,421,560 B1. (cited by applicant)

In regards to claim 10, Iwabuchi et al. teaches method steps measuring the biofeedback signal; and displaying on the display screen the information based on the biofeedback signal after measuring the biofeedback signal (see fig 4), but does not disclose displaying on the display screen an illustration showing application of a biofeedback measuring device to a user body portion for taking a biofeedback measurement. However, Yoo discloses displaying on the display screen an illustration showing application of a medical procedure. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify display of Iwabuchi in view of illustration of the medical procedure of Yoo, since Yoo states the added benefit of the increased use of the medical procedure by a user when the user has been taught to use the device, see column 1, lines 26-39.

### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C Astorino whose telephone number is 571-272-4723. The examiner can normally be reached on Monday-Friday, 8:30AM to 3:30PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571-272-4726. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'MA', followed by a horizontal line.

Michael Astorino  
May 20, 2005